IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Crl.MC.No. 3460 of 2007()

(CRIME NO.8 OF 2004 OF VANITHA POLICE STATION)

PETITIONER: ACCUSED:

FLORY,
AGED 50 YEARS,
W/O.ROBIN, KANNOTH HOUSE,
P.D.ROAD, PALLURUTHY P.O.,
KOCHI – 6.

BY ADV. SRI.S.RAJEEV

RESPONDENT: STATE:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM (CRIME NO.8 OF 2004 OF VANITHA POLICE STATION)

BY PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/11/2007 ALONG WITH CRL.M.C.NO.3456 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C.Nos. 3456 &
3460 of 2007

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Dated this the 16th day of November, 2007

ORDER

The petitioner has come to this Court with these petitions under Section 482 Cr.P.C complaining that warrants of arrest issued by the learned Magistrate against her as a witness and as an accused are chasing her.

2. There is a case and a counter case. The petitioner is the de facto complainant in one case and the sole accused in the other. Both cases were posted on 24.10.07. Both cases were then posted to 29.10.07. In the case in which the petitioner is a witness, she was bound over to appear on 29.10.07. On that date, the case in which the petitioner was the accused was called first and the said case was adjourned to 2.11.07. The petitioner assumed that both cases have been adjourned and thinking that she need appear only on 2.11.07, left the Court premises. She now submits that later on that date the case in which she is the witness called. By then the petitioner had left the Court. Her counsel represented her. Not withstanding that, a warrant of arrest has been issued to her as a witness and proceedings were initiated against her.

3. When the matter (the case in which she is the accused) came up for hearing on 2.11.07, she was not present because she was laid up. The counsel for the petitioner represented her. An application was filed to exempt her from personal presence and permit her to be represented by her counsel for the trial. It was also specifically undertaken that the petitioner's identity will not be disputed. The case was adjourned from 2.11.07 to 12.11.07. On 12.11.07 the counsel was present and request for exemption from personal appearance was made. That petition was dismissed. Warrant of arrest has been issued against her. The case in which she is the witness now stands posted to 2.12.07. The case in which the petitioner is the accused stands posted to 19.11.07.

4. In the peculiar facts and circumstances of this case, I am satisfied that following directions can be issued in favour of the petitioner. This petition is allowed. The following directions are issued.

i) The petitioner shall appear before the learned Magistrate on 19.11.07. Till that date, the warrant of arrest issued against the petitioner in the case which she is the accused shall not be executed.

Ii) She shall also appear before the learned Magistrate on 2.12.07 for the case in which she is the witness . Till then the warrant of arrest issued against the petitioner in that case shall not be executed.

iii) The petitioner shall appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which she could not appear earlier before the learned Magistrate in the case in which she is the accused. The learned Magistrate must consider favourably the said request made by the petitioner.

It is not necessary for the learned Magistrate to ritualistically insist on the personal presence of the petitioner if she claims to be represented by counsel and seeks leave under Section 317 Cr.P.C when the petitioner concedes that she is not disputing her identity. The petitioner shall also be permitted to continue in bail on the same bond which she had executed earlier.

(R.BASANT, JUDGE)

sj